

A10118F
ALBERT HEWITT MARCH 6, 2007

1

IN THE UNITED STATES DISTRICT COURT

2

FOR THE DISTRICT OF HAWAII

3

UNITED PUBLIC WORKERS,
4 AFSCME, LOCAL 646, AFL-CIO,
MUTUAL AID FUND TRUST,

5

Plaintiffs, Civil No: CV03-00598 DAE LEK

6

vs.

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GARY RODRIGUES,

8

Defendant.

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12

13

DEPOSITION OF

14

ALBERT HEWITT

15

ORLANDO, FLORIDA

16

MARCH 6, 2007

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21 ATKINSON-BAKER, INC.

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REPORTED BY: SUSAN WEISHAUP, CSR

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FILE NO.: A10118F

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ALBERT HEWITT MARCH 6, 2007

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|---|--|
| <p>1 ALBERT HEWITT,</p> <p>2 having first been duly sworn, was</p> <p>3 examined and testified as follows:</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MR. PRICE:</p> <p>6 Q. Good afternoon, Mr. Hewitt. Can you please</p> <p>7 state your full name.</p> <p>8 A. Albert Hewitt.</p> <p>9 Q. You've had your deposition taken before, is</p> <p>10 that correct?</p> <p>11 A. Yes.</p> <p>12 Q. I'm sorry, I'm not catching the answer.</p> <p>13 A. Yes.</p> <p>14 Q. Thank you. You understand that the lawyers</p> <p>15 will ask questions and you are to give sworn answers</p> <p>16 under oath?</p> <p>17 A. Yes.</p> <p>18 Q. You understand that the questions asked and</p> <p>19 the answers given are being taken down by the court</p> <p>20 reporter?</p> <p>21 A. Yes.</p> <p>22 Q. Do you understand that the court reporter will</p> <p>23 prepare a deposition transcript containing your answers</p> <p>24 in today's deposition session?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 6</p> | <p>1 document?</p> <p>2 A. Yes, it is.</p> <p>3 Q. What is this document? I'm sorry, I need to</p> <p>4 catch the answer, if you gave one.</p> <p>5 A. What was your question?</p> <p>6 Q. What is this document?</p> <p>7 A. I'm reading the document.</p> <p>8 Q. Okay. Mr. Hewitt, if you could just let me</p> <p>9 know when you're finished.</p> <p>10 A. Okay. What is your question?</p> <p>11 Q. What is this document?</p> <p>12 A. This was a document that was sent to Gary</p> <p>13 Rodrigues by myself indicating details regarding a</p> <p>14 \$250,000 loan from the Best Rescue Systems.</p> <p>15 Q. Was this letter sent on or about the date that</p> <p>16 it's dated, November 12, 1998?</p> <p>17 A. Yes.</p> <p>18 Q. At the top it says The Hewitt Company, was</p> <p>19 that your company?</p> <p>20 A. Yes.</p> <p>21 Q. What was The Hewitt Company?</p> <p>22 A. The Hewitt Company was a sole proprietorship</p> <p>23 owned by myself.</p> <p>24 Q. In the letterhead it references you as the</p> <p>25 senior managing director, were you the senior managing</p> <p style="text-align: right;">Page 8</p> |
| <p>1 Q. And do you understand that the deposition</p> <p>2 transcript may be read to the judge in the trial in this</p> <p>3 case in lieu of live testimony under certain</p> <p>4 circumstances?</p> <p>5 A. Yes.</p> <p>6 Q. And do you understand that because your</p> <p>7 answers today can be used in court, that it's important</p> <p>8 that you treat this the same as if you're testifying in a</p> <p>9 courtroom on a witness stand to a judge?</p> <p>10 A. Yes.</p> <p>11 Q. Do you understand that?</p> <p>12 A. Yes.</p> <p>13 Q. I'm sorry, I need you to repeat your answer.</p> <p>14 A. Yes.</p> <p>15 Q. How old are you?</p> <p>16 A. 51 years old.</p> <p>17 Q. Where do you currently live?</p> <p>18 A. Orlando, Florida.</p> <p>19 Q. What is your home address?</p> <p>20 A. 1539 Common Way Road.</p> <p>21 Q. Would you please take a look at Exhibit One.</p> <p>22 Do you recognize this document? I'm sorry, I'm not</p> <p>23 catching the answer.</p> <p>24 A. I'm reading the document.</p> <p>25 Q. Is that your signature on page two of the</p> <p style="text-align: right;">Page 7</p> | <p>1 director for The Hewitt Company?</p> <p>2 A. Yes.</p> <p>3 Q. Were there any other directors?</p> <p>4 A. No.</p> <p>5 Q. Were there any other full-time employees?</p> <p>6 A. No.</p> <p>7 Q. When was The Hewitt Company formed?</p> <p>8 A. Pardon?</p> <p>9 Q. When was The Hewitt Company formed?</p> <p>10 A. 1988.</p> <p>11 Q. And what did The Hewitt Company do?</p> <p>12 A. Provide financial advisory services.</p> <p>13 Q. What kind of licenses did you hold at that</p> <p>14 time in November 1998?</p> <p>15 A. SEC, investment advisor license.</p> <p>16 Q. Did you hold a stock broker's license at that</p> <p>17 time?</p> <p>18 A. Yes.</p> <p>19 Q. Did you hold a security dealer's license?</p> <p>20 A. No.</p> <p>21 Q. Were you affiliated with or registered with</p> <p>22 anyone who did hold a security dealer's license?</p> <p>23 A. Yes.</p> <p>24 Q. At that time in November 1998?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 9</p> |

3 (Pages 6 to 9)

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| <p>1 Q. Who was that? 2 A. Mayfield Securities. 3 Q. The letter is addressed to Gary Rodrigues of 4 UPW, do you see that? 5 A. Yes. 6 Q. What was your understanding in November of 7 1998 of Gary Rodrigues' position or title with UPW? 8 A. He was the executive director of the UPW. 9 Q. Before 1998, approximately how long had you 10 known Mr. Rodrigues? 11 A. Approximately eight years. 12 Q. What was your involvement, if any, with UPW in 13 November of 1998? 14 A. I managed the UPW Mutual Aid Fund and the UPW 15 Pension Account for the Local. 16 Q. What was the source of the monies for the 17 pension account, if you know? 18 A. Employee contributions. 19 Q. In November of 1998, did you know what the 20 source of the funds was for the Mutual Aid account? 21 A. No, not really. 22 Q. Did Gary Rodrigues tell you at any time before 23 November of 1998 what the source of the Mutual Aid Fund 24 account was? 25 A. I don't recall.</p> <p style="text-align: right;">Page 10</p> | <p>1 A. No. 2 Q. Did you have any discussions with 3 Mr. Rodrigues at any time regarding written guidelines 4 for the Mutual Aid Fund Trust? 5 A. No. 6 Q. Before November of 1998 did Mr. Rodrigues tell 7 you that the Mutual Aid Fund trust was an employee 8 benefit plan? 9 A. No. 10 Q. Before November of 1998 did Mr. Rodrigues tell 11 you that the Mutual Aid Fund Trust was an employee 12 welfare plan? 13 A. No. 14 Q. I'm sorry, I didn't hear the answer, if it was 15 given. 16 A. No. 17 Q. Before November 1998 did Mr. Rodrigues 18 describe the purpose of the Mutual Aid Fund Trust? 19 A. Yes. 20 Q. What did he tell you the purpose was? 21 A. The purpose was to provide a hospital -- a 22 supplemental hospital benefit to a select group of union 23 employees. 24 Q. When, approximately, did he tell you that? 25 A. I don't recall.</p> <p style="text-align: right;">Page 12</p> |
| <p>1 Q. In November of 1998 did you know what the 2 Mutual Aid Fund Trust was? 3 A. No. 4 Q. I'm sorry, I didn't hear the answer, if one 5 was given. 6 A. No. 7 Q. I'm sorry, was the answer no? 8 A. Yes. 9 Q. In November of 1998, did Mr. Rodrigues provide 10 to you a constitution of the Mutual Aid Fund Trust? 11 A. No. 12 Q. Did he provide to you in November of 1998 the 13 bylaws for the Mutual Aid Fund Trust? 14 A. No. 15 Q. Did Mr. Rodrigues provide to you, in November 16 of 1998, or any time before November of 1998, a plan 17 description for the Mutual Aid Fund Trust? 18 A. No. 19 Q. Did Mr. Rodrigues provide to you any written 20 documents relating to or describing what the Mutual Aid 21 Fund Trust was before November of 1998? 22 A. No. 23 Q. Did Mr. Rodrigues provide to you any written 24 investment guidelines for the Mutual Aid Fund Trust 25 before November of 1998?</p> <p style="text-align: right;">Page 11</p> | <p>1 Q. Was it before November of 1998? 2 A. Yes. 3 Q. Did Mr. Rodrigues tell you that the Mutual Aid 4 Fund Trust was an ERISA plan? 5 A. No. 6 Q. Did he tell you before November of 1998 that 7 it was a plan under the Employee Retirement Income 8 Security Act? 9 A. No. 10 Q. Now, all those questions that I asked you were 11 directed before November of 1998 and so I want to ask a 12 similar line of questioning all the way up until, ask at 13 any time, and let me just go through them very quickly. 14 Did Mr. Rodrigues at any time provide you with the 15 constitution, bylaws or a plan description for the Mutual 16 Aid Fund Trust? 17 A. No. 18 Q. Did he provide you at any time any written 19 investment guidelines for the Mutual Aid Fund Trust? 20 A. No. 21 Q. Did Mr. Rodrigues tell you at any time that 22 the Mutual Aid Fund Trust was an ERISA plan? 23 A. No. 24 Q. When you had dealings regarding the Mutual Aid 25 Fund Trust, who was your point of contact?</p> <p style="text-align: right;">Page 13</p> |

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1 A. Mr. Rodrigues.
2 Q. Did you have any discussions with anyone else
3 that you understood was affiliated with the Mutual Aid
4 Fund Trust about the Mutual Aid Fund Trust?
5 A. No.
6 Q. Did you ever meet any board members of the
7 Mutual Aid Fund Trust?
8 A. No.
9 Q. Did you ever meet any trustees of the Mutual
10 Aid Fund Trust?
11 A. No.
12 Q. I'm sorry, I didn't hear the answer, if one
13 was given.
14 A. No.
15 Q. Did Mr. Rodrigues tell you that there was a
16 board for the Mutual Aid Fund Trust?
17 A. I don't recall.
18 Q. In your conversations with Mr. Rodrigues about
19 the Mutual Aid Fund Trust, did he ever tell you that he
20 needed to review matters with the board of the Mutual Aid
21 Fund Trust?
22 A. I don't recall.
23 Q. Did Mr. Rodrigues ever tell you that he needed
24 to get approval of the board before doing any acts on
25 behalf of the Mutual Aid Fund Trust?

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1 A. I don't recall.
2 Q. In November of 1998 did you have an
3 understanding as to who was in control of or in charge of
4 how the Mutual Aid Fund Trust monies were used?
5 A. I don't understand your question.
6 Q. Did you understand that Gary Rodrigues was the
7 person who was in charge of the Mutual Aid Fund Trust?
8 A. Gary Rodrigues was my point person.
9 Q. Did you have any understanding in November of
10 1998 that you needed the approval of anyone else besides
11 your point person, Gary Rodrigues, when dealing with
12 Mutual Aid Fund Trust monies?
13 A. Well, Gary Rodrigues was my point person, so I
14 had to accept what he told me to do.
15 Q. And just to clarify, did he tell you that he
16 needed the approval of anyone else when making use of
17 Mutual Aid Fund money?
18 A. I don't recall.
19 Q. The Exhibit One letter dated November 12, 1998
20 references Best Rescue Systems, do you see that?
21 A. Yes.
22 Q. I'm sorry, I didn't hear an answer if one was
23 given.
24 A. Yes.
25 Q. What was Best Rescue Systems?

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1 A. It was a start-up company that was developing
2 a product to get people out of high-rise buildings and
3 structures in the event of an emergency.
4 Q. When was that start-up company first formed?
5 A. I don't recall the exact date.
6 Q. As of November 1998, approximately how long
7 had Best Rescue been in existence?
8 A. I don't recall at this point.
9 Q. Would it have been more than a year or less
10 than a year?
11 A. I don't recall.
12 Q. Would it be fair to say that the company was
13 less than two years old as of November 1998?
14 A. I don't recall.
15 Q. You said that it was developing a fire rescue
16 product, is that correct?
17 A. Correct.
18 Q. As of November 1998 what was your involvement,
19 if any, with Best Rescue?
20 A. Financial advisory.
21 Q. And what do you mean by that?
22 A. I was hired by the company to look at
23 strategic alternatives for the company, including
24 obtaining funding.
25 Q. Did you approach Gary Rodrigues about

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1 obtaining funding for Best Rescue?
2 A. Yes.
3 Q. When?
4 A. Sometime prior to November 12, 1998.
5 Q. Describe your discussions with Mr. Rodrigues
6 regarding Best Rescue before November of 1998.
7 A. I showed Mr. Rodrigues some information
8 regarding the company that was prepared by the University
9 of Central Florida Business Development Center and we
10 both agreed that this would be a good idea for the state
11 of Hawaii, considering the number of high rises in
12 Honolulu.
13 Q. What was the Central Florida Business
14 Development Center?
15 A. It was a university-based incubator for small
16 businesses.
17 Q. Before November of 1998, did Best Rescue have
18 a completed business plan?
19 A. Repeat your question.
20 Q. Before November 1998 did Best Rescue have a
21 completed business plan?
22 A. Yes.
23 Q. I'm sorry, is your answer yes?
24 A. Yes.
25 Q. I'm looking for a document among the exhibits

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5 (Pages 14 to 17)

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1 that describes that the business plan had not yet been
 2 completed and I'd like to show it to you, just to see if
 3 that -- if you could please look at Exhibit 12. And I'm
 4 looking at the first paragraph of page two of Exhibit 12.
 5 Now, is Exhibit 12 a letter that you wrote to
 6 Mr. Rodrigues dated September 10, 1999?

7 A. I'm reading the letter.

8 Q. Mr. Hewitt, just let me know when you've had a
 9 chance to look at that.

10 A. Okay.

11 Q. Is this a letter that you wrote to
 12 Mr. Rodrigues dated September 10, 1999?

13 A. Wait, I'm finishing reading the letter.

14 Q. I'm sorry.

15 A. I'm finished reading the letter. What's your
 16 question?

17 Q. Is Exhibit 12 a letter that you wrote to
 18 Mr. Rodrigues?

19 A. Yes.

20 Q. On September 10, 1999?

21 A. Yes.

22 Q. Now, on page two of that letter it talks about
 23 finishing the business plan, in the first paragraph, can
 24 you see that?

25 A. Yes.

Page 18

1 Q. Does this letter refresh your memory that at
 2 least as of the date of this letter, September 10, 1999,
 3 that the business plan for Best Rescue had not yet been
 4 completed?

5 A. This was a revision of the original business
 6 plan, a more thorough business plan.

7 Q. Was the more thorough business plan completed
 8 as of September 10, 1999?

9 A. No.

10 Q. As of September 1999, had any marching plans
 11 been completed?

12 A. No.

13 Q. As of September 1999, had the certification
 14 process been completed?

15 A. It was in the final stages.

16 Q. What did the certification process entail?

17 A. It entailed engineers doing various tests for
 18 product certification.

19 Q. And what was your understanding as to why
 20 certification was necessary?

21 A. Because we were asking people to step out of a
 22 window, or should I say the company was asking people to
 23 step out of a window and be lowered to the ground in the
 24 event of an emergency.

25 Q. Was the engineering certification necessary to

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1 ensure the safety of the product?

2 A. Correct.

3 Q. Is it correct, I'm looking at the bottom of
 4 page two of Exhibit 12, that the product videos had not
 5 yet been finished as of September 1999?

6 A. Correct.

7 Q. Is it correct that as of September 1999 Best
 8 Rescue had not yet signed up distributors for the
 9 product?

10 A. I don't recall.

11 Q. I'm looking at the last sentence in the second
 12 paragraph on page two of this letter dated September 10,
 13 1999 to Mr. Rodrigues. And is it correct, if you look at
 14 that sentence, is that sentence correct when written,
 15 that as of that date distributors had not yet been signed
 16 up?

17 A. What I say in that sentence is the first
 18 group, I'm not sure if one or two individual distributors
 19 hadn't been signed by that point.

20 Q. As of September 1999, had Best Rescue received
 21 sales orders for the product?

22 A. Yes.

23 Q. How many?

24 A. One.

25 Q. What was the value?

Page 20

1 A. Approximately \$30,000.

2 Q. Was that the total amount of sales of product
 3 up until September 1999 for the company?

4 A. To my knowledge.

5 Q. As of September 1999 had Best Rescue received
 6 all patents for the various components of the product?

7 A. A patent was existingly pending.

8 Q. And had the patent yet been completed and
 9 received?

10 A. No.

11 Q. Was Best Rescue, as of September 1999,
 12 generating any other revenue other than the approximately
 13 \$30,000 in sales, that you recall?

14 A. No.

15 Q. Now, going back to Exhibit One, in November of
 16 1998, at the time that you had written this letter, had
 17 Gary Rodrigues agreed to fund \$250,000 to Best Rescue?

18 A. I don't recall.

19 Q. The letter describes funds coming from the
 20 pension account and from the Mutual Aid account. Were
 21 any funds provided to Best Rescue from the UPW pension
 22 account at any time?

23 A. No.

24 Q. Do you know why not?

25 A. Because of the ERISA nature of that account.

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6 (Pages 18 to 21)

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| <p>1 Q. And what about the ERISA nature of the account 2 resulted in no funds being paid to Best Rescue from the 3 pension account? 4 A. I don't recall the exact details. 5 Q. In this letter, Exhibit One, at the first 6 bullet point it talks about moving funds from the pension 7 account for the loan was discouraged by First Hawaiian 8 due to legal constraints. Is the legal constraints 9 referenced in that letter the ERISA issue that you just 10 discussed? 11 A. I believe so. 12 Q. At the second or last paragraph of that letter 13 it talks about upon recapitalization of the company in 14 January when the other investors (DTRIC and Royal State 15 Group) funds are expected, and then it goes on. Did you 16 make any kind of presentation to DTRIC regarding Best 17 Rescue? 18 A. Yes. 19 Q. Did DTRIC commit to providing funds to Best 20 Rescue? 21 A. I don't understand your question. 22 Q. Did DTRIC commit or agree to provide funds to 23 Best Rescue? 24 A. In word only. 25 Q. And what do you mean by that?</p> <p style="text-align: right;">Page 22</p> | <p>1 referenced in the September 1999 letter? 2 A. It would be the original business plan. 3 Q. If you could please look at Exhibit Two, 4 titled Secured Promissory Note and after you've had a 5 chance to look at that, my question will be, do you 6 recognize this document? 7 A. I recognize this document. 8 Q. And was this a promissory note for \$250,000 to 9 be loaned by the UPW Mutual Aid Fund to Best Rescue? 10 A. Correct. 11 Q. Do you recognize the signature on the last 12 page of the Secured Promissory Note? 13 A. Yes. 14 Q. Is that Mr. Kirkland's signature? 15 A. Yes. 16 Q. I'm sorry, I didn't hear the answer, if it was 17 given. 18 A. Yes. 19 Q. Was there \$250,000, in fact, funded? 20 A. Yes. 21 Q. The secured promissory note, and I'm looking 22 at what is labeled Subparagraph B, has a date of demand 23 of not prior to January 1, 1999, do you see that? 24 A. Yes. 25 Q. Prior to UPW Mutual Aid Fund making this loan,</p> <p style="text-align: right;">Page 24</p> |
| <p>1 A. There was no written documentation stating 2 that they would commit funds. 3 Q. Did DTRIC ever provide funds to Best Rescue? 4 A. No. 5 Q. Were you ever told why DTRIC did not? 6 A. No. 7 Q. Did you make a presentation to Royal State 8 Group about Best Rescue? 9 A. Yes. 10 Q. Did Royal State Group ever provide funds to 11 Best Rescue? 12 A. No. 13 Q. Were you ever told why Royal State Group did 14 not provide funds to Best Rescue? 15 A. No. 16 Q. The last sentence of the second to last 17 paragraph on page two of the letter reads "a complete 18 package on the company, including business plan, is being 19 currently completed and will be forwarded to you next 20 week". Was that business plan forwarded the following 21 week? 22 A. I don't recall. 23 Q. Do you know if the business plan referenced in 24 your letter here is the original business plan or are you 25 referencing the more thorough business plan that was</p> <p style="text-align: right;">Page 23</p> | <p>1 did you have any discussions with Mr. Rodriguez about 2 what the monies would be used for by Best Rescue? 3 A. Yes. 4 Q. I'm, sorry, I didn't hear the answer if it was 5 given. 6 A. Yes. 7 Q. What did you discuss? 8 A. I don't recall exactly. 9 Q. What was the money used for, generally? 10 A. Company purposes. 11 Q. Can you be a little bit more specific? 12 A. I don't recall the exact breakdown at this 13 date. 14 Q. Before the first \$250,000 loan was made, did 15 Mr. Rodriguez visit Best Rescue's office or place of 16 operations? 17 A. No. 18 Q. Did Best Rescue have an office in November of 19 1998? 20 A. I don't recall. 21 Q. Did Best Rescue have any full-time employees 22 in November of 1998? 23 A. Yes. 24 Q. How many? 25 A. Approximately three or four.</p> <p style="text-align: right;">Page 25</p> |

7 (Pages 22 to 25)

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1 Q. Before the \$250,000 loan was made, were those
2 employees being paid?
3 A. I don't know.
4 Q. Before the \$250,000 loan was made, was Best
5 Rescue generating any revenue?
6 A. I don't recall.
7 Q. Before the \$250,000 loan was made, did
8 Mr. Rodrigues meet with or talk to Mr. Kirkland, the
9 president?
10 A. I don't recall.
11 Q. Did Mr. Rodrigues ask you about Mr. Kirkland's
12 business experience?
13 A. I don't recall.
14 Q. Did Mr. Rodrigues, before making the \$250,000
15 loan on behalf of the Mutual Aid Fund, ask to review Best
16 Rescue's financials?
17 A. I don't recall.
18 Q. Before this loan was made, did you tell
19 Mr. Rodrigues that Best Rescue was a start-up developing
20 company that was developing a product?
21 A. Yes.
22 Q. Did you tell Mr. Rodrigues that the company
23 had -- was not yet generating revenue?
24 A. I don't recall.
25 Q. Did you tell Mr. Rodrigues before this first

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1 Q. In addition to the loan origination fee, did
2 you receive any other monies from Best Rescue?
3 A. I don't recall.
4 Q. Did you provide any kind of management
5 services to or consulting services to Best Rescue?
6 A. Yes.
7 Q. I'm sorry, I didn't hear the answer, if one
8 was given.
9 A. Yes.
10 Q. And did you receive a fee or compensation for
11 your management or consulting services to Best Rescue at
12 any time?
13 A. Yes.
14 Q. And did you tell Mr. Rodrigues that you were
15 receiving a management or consulting fee from Best
16 Rescue?
17 A. Yes, to my knowledge.
18 Q. And that management or consulting fee was in
19 addition to the five percent loan origination fee, is
20 that correct?
21 A. Yes.
22 Q. Did you advance any monies for expenses on
23 behalf of Best Rescue for which you were reimbursed?
24 A. Yes.
25 Q. Did you tell Mr. Rodrigues that you were being

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1 loan in November of 1998 that the product was still in
2 the process of testing and certification?
3 A. I don't recall.
4 Q. Did you receive any kind of fee or payment in
5 connection with the first \$250,000 loan?
6 A. Yes.
7 Q. What was the amount of your fee?
8 A. Five percent of the money that came in.
9 Q. How would you characterize that five percent?
10 Did you think of it as a commission, a finder's fee, a
11 loan origination fee; in your mind, what was the label
12 for the five percent?
13 A. A loan origination fee paid by Best Rescue.
14 Q. Did you tell Mr. Rodrigues, before the first
15 \$250,000 loan was made, that you would be receiving a
16 five percent fee?
17 A. I don't recall.
18 Q. Did you tell Mr. Rodrigues at any time that
19 you would be receiving a five percent fee in connection
20 with Mutual Aid Fund loans?
21 A. To my knowledge, I did.
22 Q. How was the five percent fee arrived at with
23 Best Rescue?
24 A. It was a negotiation between me and
25 Mr. Kirkland.

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1 reimbursed by Best Rescue for any monies that you
2 advanced on behalf of Best Rescue?
3 A. Yes.
4 Q. Please look at Exhibit Number Two. And after
5 you've had a chance to look at it -- I'm sorry, I believe
6 we have identified Exhibit Number Two. If you could look
7 at Exhibit Three, please. After you've had a chance to
8 look at it, my question will be, do you recognize this
9 document and what is it?
10 A. I'm familiar with the document.
11 Q. And was this the Security Agreement for the
12 Secured Promissory Note that was marked as Exhibit Number
13 Two?
14 A. Yes.
15 Q. And do you recognize the signature on page
16 five to be that of Robert Kirkland?
17 A. Yes.
18 Q. Are you familiar with Gary Rodrigues'
19 signature?
20 A. No.
21 Q. Looking at page six, do you know if that's
22 Gary Rodrigues' signature?
23 MR. SEITZ: Objection, he answered he wasn't
24 familiar with it.
25 BY MR. PRICE:

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8 (Pages 26 to 29)

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| <p>1 Q. Subject to that objection, can you answer the 2 question, please? Do you know if that's Gary Rodrigues' 3 signature? 4 A. To the best of my knowledge. 5 Q. Underneath the signature on page six is 6 written the words "State Director and Administrator", do 7 you see that? 8 A. Yes. 9 Q. Did you ever have any discussions with 10 Mr. Rodrigues about the title Administrator of United 11 Public Workers Mutual Aid Fund? 12 A. No. 13 Q. On the last page of this document is Exhibit 14 B, Assets Subject to Security Interest, do you see that? 15 A. Yes. 16 Q. I'm sorry, I didn't hear the answer, if it was 17 given. 18 A. Yes. 19 Q. Number one is "all property, equipment and 20 assets comprising the business of Best Rescue Systems, 21 Inc." Did Best Rescue Systems, in November of 1998, did 22 they have office furniture and equipment? 23 A. I don't recall. 24 Q. Did it have any completed fire rescue products 25 at that time?</p> <p style="text-align: right;">Page 30</p> | <p>1 And my question is, do you know if the value of those 2 assets, as of November 1998, was more than or less than 3 \$250,000? 4 A. I don't recall. 5 Q. In November of 1998, did you take any steps to 6 determine the value of the items listed on the Exhibit B 7 to this document, Assets Subject to Security Interest? 8 A. I don't recall. 9 Q. Do you know if Gary Rodrigues took any steps 10 to determine the value of the assets subject to security 11 interest? 12 A. No. 13 Q. To your knowledge, did Mr. Rodrigues have any 14 communications directly with anyone at Best Rescue at any 15 time? 16 A. I don't recall. 17 Q. To your knowledge, was any communications with 18 Best Rescue typically and usually through you between 19 Gary Rodrigues and Best Rescue? 20 A. Typically. 21 Q. I mean, for example, when these security 22 agreements and the secured promissory note were provided 23 to Mr. Rodrigues for signature, did you provide them or 24 did they come directly from Best Rescue, an attorney or 25 someone else?</p> <p style="text-align: right;">Page 32</p> |
| <p>1 A. Yes. 2 Q. Do you know how many? 3 A. I don't recall. 4 Q. Do you know the approximate value of Best 5 Rescue's fire rescue products and furniture, office -- 6 furniture, fixtures and equipment as of November 1998? 7 A. I don't recall. 8 Q. Did Best Rescue have any accounts receivables 9 in November 1998? 10 A. I don't recall. 11 Q. Did Best Rescue have any registered trade 12 names, trademarks, service marks, logos or copyrights in 13 November 1998? 14 A. I don't recall. 15 Q. Do you know if it had any at any time? 16 A. I don't recall. 17 Q. Trademarks, service marks, logos or copyrights 18 that were registered. 19 A. I don't recall. 20 Q. Was the value of the assets subject to the 21 security interests listed in Exhibit B more than or less 22 than \$250,000 as of November 1998? 23 A. I don't understand your question. 24 Q. The last page, "assets subject to security 25 agreement," items one through ten list various assets.</p> <p style="text-align: right;">Page 31</p> | <p>1 A. All of the above. 2 Q. Okay, do you know who prepared the security 3 agreement, who drafted it? 4 A. An attorney hired by Best Rescue. 5 Q. His name was? 6 A. I don't recall. 7 Q. And do you know if he communicated directly 8 with Mr. Rodrigues, either orally or in writing? 9 A. I don't recall. 10 Q. If you could please look at Exhibit Number 11 Four and after you've had a chance to look at it, my 12 question will be, do you recognize that document? 13 A. I recognize the document. 14 Q. Is that Mr. Kirkland's signature on the bottom 15 of page two of that document? 16 A. Yes. 17 Q. This is a \$200,000 secured promissory note 18 dated February 5, 1999, is that correct? 19 A. Yes. 20 Q. Was the \$200,000 referenced in this secured 21 promissory note, in fact, funded by United Public Workers 22 Mutual Aid Fund? 23 A. Yes. 24 Q. Between November of 1998 and the first secured 25 promissory note for \$250,000 and the second secured</p> <p style="text-align: right;">Page 33</p> |

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| <p>1 promissory note in February 1998 -- 1999, did you have</p> <p>2 any discussions with Mr. Rodrigues about additional</p> <p>3 funding for Best Rescue?</p> <p>4 A. I'm sorry, you just confused me. Can you</p> <p>5 repeat your question?</p> <p>6 Q. Yes. Between the first promissory note in</p> <p>7 November 1998 and the second promissory note in February</p> <p>8 1999, did you talk to Mr. Rodrigues about additional</p> <p>9 funding for Best Rescue?</p> <p>10 A. Yes.</p> <p>11 Q. What did you discuss?</p> <p>12 A. I don't recall exactly.</p> <p>13 Q. Did you explain why additional funds were</p> <p>14 needed?</p> <p>15 A. Yes.</p> <p>16 Q. And what's your recollection as to why the</p> <p>17 additional funds were needed?</p> <p>18 A. Continued development of the products.</p> <p>19 Q. And did you tell that to Mr. Rodrigues?</p> <p>20 A. To my knowledge, yes.</p> <p>21 Q. Now, for this loan and for any other loans we</p> <p>22 discuss, did you receive a fee in connection with those</p> <p>23 loans, as was true with the first loan?</p> <p>24 A. Yes.</p> <p>25 Q. What was the amount?</p> <p style="text-align: right;">Page 34</p> | <p>1 A. No.</p> <p>2 Q. I'm sorry, I didn't hear the answer, if one</p> <p>3 was given.</p> <p>4 A. No.</p> <p>5 Q. At the time that this second loan of \$200,000</p> <p>6 was made in February of 1999, did you have any</p> <p>7 discussions with Mr. Rodrigues up until that time as to</p> <p>8 the total amount that the UPW Mutual Aid Fund would be</p> <p>9 providing to Best Rescue?</p> <p>10 A. I don't recall.</p> <p>11 Q. I'm sorry, I didn't hear the answer, if it was</p> <p>12 given.</p> <p>13 A. I don't recall.</p> <p>14 Q. Did you have any discussions before any loans</p> <p>15 were made about something to the effect that Best Rescue</p> <p>16 will need a million dollars and that will be funded over</p> <p>17 a course of a year; was there any specific funding plan</p> <p>18 that was discussed before the loans were made?</p> <p>19 A. No.</p> <p>20 Q. If you could please look at Exhibit Number</p> <p>21 Five. My question would be, is that your signature on</p> <p>22 this document?</p> <p>23 A. Yes.</p> <p>24 Q. Is this a letter that you sent to</p> <p>25 Mr. Rodrigues on or about February 16, 1999?</p> <p style="text-align: right;">Page 36</p> |
| <p>1 A. Five percent.</p> <p>2 Q. And did that apply for each and every loan</p> <p>3 from the Mutual Aid Fund to Best Rescue?</p> <p>4 A. Yes.</p> <p>5 Q. In addition to the five percent loan fee, did</p> <p>6 you also receive management and consulting fees from Best</p> <p>7 Rescue?</p> <p>8 A. Yes.</p> <p>9 Q. In addition to the loan fee and the management</p> <p>10 consulting fees, did you also receive reimbursement for</p> <p>11 any advances you had made to or on behalf of Best Rescue?</p> <p>12 A. Yes.</p> <p>13 Q. Did you receive any kind of compensation from</p> <p>14 UPW during this time period in late 1998 and early 1999</p> <p>15 for managing the Mutual Aid Fund account?</p> <p>16 A. Yes.</p> <p>17 Q. And how was that compensation calculated?</p> <p>18 A. Based on assets the prior year.</p> <p>19 Q. Was it a percentage?</p> <p>20 A. Yes.</p> <p>21 Q. What was the percentage?</p> <p>22 A. Approximately one percent.</p> <p>23 Q. And was that -- did that percentage vary at</p> <p>24 all during the course of the year based on number of</p> <p>25 transactions or anything like that?</p> <p style="text-align: right;">Page 35</p> | <p>1 A. Yes.</p> <p>2 Q. What was the purpose of the letter, generally?</p> <p>3 A. It was tied to Exhibit Four.</p> <p>4 Q. I'm sorry, did you say Exhibit Three?</p> <p>5 A. Exhibit Four.</p> <p>6 Q. Exhibit Four is the promissory note, is that</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. And then Exhibit Three is the original</p> <p>10 security agreement that's referenced in this February 16,</p> <p>11 1999 letter?</p> <p>12 A. Yes.</p> <p>13 Q. And was the purpose of this letter just to</p> <p>14 simply point out that instead of doing a new security</p> <p>15 agreement, that these new funds would also be covered by</p> <p>16 that original security agreement?</p> <p>17 A. Correct.</p> <p>18 Q. If you could please look at Exhibit Six. And</p> <p>19 my question will be, do you recognize that document?</p> <p>20 A. Yes.</p> <p>21 Q. Is that Mr. Kirkland's signature on page two</p> <p>22 of Exhibit Six?</p> <p>23 A. Yes.</p> <p>24 Q. And this is a \$150,000 secured promissory note</p> <p>25 dated April 26, 1999, is that correct?</p> <p style="text-align: right;">Page 37</p> |

10 (Pages 34 to 37)

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1 A. Correct.
2 Q. I'm sorry, I didn't hear the answer, if it was
3 given.
4 A. Yes.
5 Q. Was this \$150,000, in fact, funded by the UPW
6 Mutual Aid Fund?
7 A. Yes.
8 Q. Before this \$150,000 was paid, did you have
9 any discussions with Mr. Rodriguez as to what the monies
10 would be used for?
11 A. Yes.
12 Q. What did you discuss?
13 A. I don't recall exactly.
14 Q. Approximately how often or how many times
15 would you talk to Mr. Rodriguez about Best Rescue from
16 the time of the first loan in November of 1998 until this
17 time in April of 1999?
18 A. To my recollection, at least monthly.
19 Q. And were these meetings -- did you ever meet
20 with him in person?
21 A. Yes.
22 Q. And what do you recall Mr. Rodriguez asking
23 you about Best Rescue, generally, in these meetings?
24 A. I don't recall exactly. Of course, the
25 purpose of our meetings was to provide a progress report.

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1 Q. And did you, as you mentioned in other
2 meetings, discuss that the company was using the monies
3 to develop the product?
4 A. Correct.
5 Q. If you could please look at Exhibit Seven. Is
6 that your signature on Exhibit Seven?
7 A. Yes.
8 Q. Is that Mr. Kirkland's signature on Exhibit
9 Seven?
10 A. Yes.
11 Q. I'm sorry, I didn't hear the answer, if it was
12 given.
13 A. Yes.
14 Q. And this is a letter from you to Mr. Rodriguez
15 dated April 26, 1999, is that correct?
16 A. Yes.
17 Q. And did you send the letter on or about that
18 date?
19 A. Yes.
20 Q. And the third secured promissory note, is that
21 the Exhibit Six you looked at?
22 A. Yes.
23 Q. And the letter references the original
24 security agreement and is that the original security
25 agreement that was marked as Exhibit Three?

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1 A. Yes.
2 Q. And was the purpose of this letter the same as
3 the other letter, which was to indicate that this
4 additional loan was covered by the original security
5 agreement?
6 A. Yes.
7 Q. If you could please look at Exhibit Eight. Do
8 you recognize that document?
9 A. Yes.
10 Q. Is that Mr. Kirkland's signature on that
11 document?
12 A. Yes.
13 Q. This is a \$250,000 secured promissory note
14 dated June 30, 1999, is that correct?
15 A. Yes.
16 Q. Were these funds, \$250,000, in fact, funded
17 and paid to Best Rescue?
18 A. Yes.
19 Q. In connection -- I think I asked this before.
20 Is it correct that in connection with all loans, that you
21 received a five percent loan origination fee?
22 A. Yes.
23 Q. Did you continue from April 1999 to June 1999,
24 during that period, continue to meet or talk with
25 Mr. Rodriguez about Best Rescue?

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1 A. Yes.
2 Q. And was that typically on a monthly update?
3 A. At least, yes.
4 Q. Before this loan of \$250,000, did you have any
5 discussions with Mr. Rodriguez about the purpose of the
6 funds?
7 A. Yes.
8 Q. What did you discuss?
9 A. We were -- a progress report, what was going
10 on. Approximately at this time I recall the
11 certification was getting in the full force and a lot of
12 the money was being used for trade shows to get -- for
13 trade shows to get acceptance by the fire and rescue
14 community.
15 Q. When you say acceptance, was Best Rescue
16 seeking any kind of certification from or seal of
17 approval from any fire rescue organization?
18 A. Yes, seal of approval.
19 Q. And who would give that seal of approval?
20 A. I don't recall the exact organizations at this
21 point.
22 Q. Was it more than one organization?
23 A. Yes.
24 Q. And were those seal of approvals ever
25 obtained?

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| <p>1 A. Verbally.</p> <p>2 Q. In writing, is that correct?</p> <p>3 A. I said verbally.</p> <p>4 Q. Okay, I just want to define that. Did Best</p> <p>5 Rescue ever receive any written certification or seal of</p> <p>6 approval from any fire rescue organization?</p> <p>7 A. No.</p> <p>8 Q. When you say verbally, from whom, which</p> <p>9 organization or organizations?</p> <p>10 A. I don't remember the exact names of the</p> <p>11 organizations, but many demonstrations were conducted</p> <p>12 before senior fire personnel.</p> <p>13 Q. And when you say verbally, they would say that</p> <p>14 they liked the product?</p> <p>15 A. Yes.</p> <p>16 Q. If you could look at Exhibit Number Nine. And</p> <p>17 is that your signature on Exhibit Nine?</p> <p>18 A. Yes.</p> <p>19 Q. Is that Mr. Kirkland's signature on Exhibit</p> <p>20 Nine?</p> <p>21 A. I can't hear you, you broke up.</p> <p>22 Q. Is that Mr. Kirkland's signature also on</p> <p>23 Exhibit Nine?</p> <p>24 A. Yes.</p> <p>25 Q. And it's a letter from you to Mr. Rodrigues</p> <p style="text-align: right;">Page 42</p> | <p>1 A. Yes.</p> <p>2 Q. Between June of 1999 and August of 1999 did</p> <p>3 you continue to have update meetings with Mr. Rodrigues</p> <p>4 regarding Best Rescue?</p> <p>5 A. Yes.</p> <p>6 Q. And do you have any specific recollection as</p> <p>7 to what was discussed regarding this \$150,000 loan?</p> <p>8 A. Continued progress reports, the developmental</p> <p>9 phase was continuing, certification was continuing, the</p> <p>10 demonstrations were continuing, they were close to</p> <p>11 getting their first order.</p> <p>12 Q. When did Best Rescue get their first order?</p> <p>13 A. Sometime that summer of '99.</p> <p>14 Q. Was that the \$30,000 in sales that you</p> <p>15 referenced earlier?</p> <p>16 A. Correct.</p> <p>17 Q. Would you please look at Exhibit 11. Do you</p> <p>18 recognize this document?</p> <p>19 A. Yes.</p> <p>20 Q. Is that Mr. Kirkland's signature on the bottom</p> <p>21 of this document?</p> <p>22 A. Yes.</p> <p>23 Q. My copy does not have your signature on it. I</p> <p>24 assume yours is the same. Is there a signature for you</p> <p>25 on your copy of Exhibit 11 in front of you?</p> <p style="text-align: right;">Page 44</p> |
| <p>1 dated June 30, 1999, is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And the \$250,000 for the secured promissory</p> <p>4 note is the Exhibit Eight that we just looked at, is that</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And the security agreement referenced in your</p> <p>8 letter is the original security agreement which was</p> <p>9 marked as Exhibit Three, is that correct?</p> <p>10 A. Correct.</p> <p>11 Q. And this letter served the purpose -- same</p> <p>12 purpose as the other letters that we looked at?</p> <p>13 A. Yes.</p> <p>14 Q. Would you please look at Exhibit Ten. Is that</p> <p>15 Mr. Kirkland's signature on page two?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recognize this document?</p> <p>18 A. Yes.</p> <p>19 Q. I'm sorry, I didn't hear the answer, if given.</p> <p>20 A. Yes.</p> <p>21 Q. Is this \$150,000 secured promissory note dated</p> <p>22 August 24, 1999?</p> <p>23 A. Yes.</p> <p>24 Q. And did UPW Mutual Aid Fund, in fact, pay and</p> <p>25 fund the \$150,000 referenced in this note?</p> <p style="text-align: right;">Page 43</p> | <p>1 A. No, there's no signature, my signature is not</p> <p>2 here.</p> <p>3 Q. Do you know if this letter was sent to</p> <p>4 Mr. Rodrigues on or about August 24, 1999?</p> <p>5 A. I would assume yes.</p> <p>6 Q. Now, as of this time, the total amount loaned</p> <p>7 by the UPW Mutual Aid Fund was a million dollars, is that</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And the 150,000 fifth secured promissory note</p> <p>11 is the Exhibit Ten that we just looked at, is that</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. And the security agreement is the Exhibit</p> <p>15 Three, the original security agreement in November of</p> <p>16 1998, is that correct?</p> <p>17 A. Correct.</p> <p>18 Q. If you could please look at Exhibit 12. I</p> <p>19 think we looked at this earlier, but after you've had a</p> <p>20 chance to read it again, if you could let me know.</p> <p>21 A. I'm fine.</p> <p>22 Q. And is that your signature on page two of this</p> <p>23 document?</p> <p>24 A. Yes.</p> <p>25 Q. And this is a letter from you to Mr. Rodrigues</p> <p style="text-align: right;">Page 45</p> |

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| <p>1 dated September 10, 1999, is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Did you send this letter on or about the date</p> <p>4 it shows, September 10, 1999?</p> <p>5 A. Yes.</p> <p>6 Q. As of September 1999, had Mr. Rodrigues</p> <p>7 expressed any concerns to you about the loans to Best</p> <p>8 Rescue?</p> <p>9 A. I don't recall.</p> <p>10 Q. We had seen the first promissory note had a</p> <p>11 demand date of no earlier than January 1st, 1999, do you</p> <p>12 recall that?</p> <p>13 A. Yes.</p> <p>14 Q. And the note and the letter that we looked at</p> <p>15 earlier talked about how there would be capitalization of</p> <p>16 Best Rescue expected at sometime in 1999, do you recall</p> <p>17 that, generally?</p> <p>18 A. Yes.</p> <p>19 Q. Did Best Rescue ever receive the expected</p> <p>20 funding or capitalization from any other source other</p> <p>21 than UPW Mutual Aid Fund?</p> <p>22 A. No.</p> <p>23 Q. Did you, during the course of 1999, take steps</p> <p>24 to try to secure funding from sources other than the</p> <p>25 Mutual Aid Fund?</p> <p style="text-align: right;">Page 46</p> | <p>1 Q. At any time before September of 1999, to your</p> <p>2 knowledge, did Mr. Rodrigues meet with Mr. Kirkland?</p> <p>3 A. Clarify your question.</p> <p>4 Q. To your knowledge, before September 1999, did</p> <p>5 Mr. Rodrigues meet with Mr. Kirkland?</p> <p>6 A. I don't believe so.</p> <p>7 Q. Do you know if he spoke to Mr. Kirkland on the</p> <p>8 phone prior to September 1999?</p> <p>9 A. I don't know that.</p> <p>10 Q. This letter references in the very first</p> <p>11 bullet point, interest checks for two periods. Was Best</p> <p>12 Rescue paying interest on the UPW Mutual Aid Fund loans?</p> <p>13 A. Yes.</p> <p>14 Q. There's a reference here to a one million</p> <p>15 dollar total capitalization from UPW pension fund. Do</p> <p>16 you see that?</p> <p>17 A. Yes.</p> <p>18 Q. I'm sorry, I didn't hear the answer, if given?</p> <p>19 A. Yes.</p> <p>20 Q. As of September 1999, was the possibility of</p> <p>21 the UPW investing or loaning money to Best Rescue still a</p> <p>22 possibility?</p> <p>23 A. Yes, to my knowledge.</p> <p>24 Q. Were there any concerns expressed about the</p> <p>25 issue that you talked about earlier, which was that there</p> <p style="text-align: right;">Page 48</p> |
| <p>1 A. Yes.</p> <p>2 Q. Can you describe for us generally what you</p> <p>3 did?</p> <p>4 A. I contacted a number of venture capital funds</p> <p>5 and there was interest.</p> <p>6 Q. Then is it correct that no one ultimately made</p> <p>7 a commitment and actually funded additional monies to</p> <p>8 Best Rescue other than the UPW Mutual Aid Fund?</p> <p>9 A. Correct.</p> <p>10 Q. Did any of those venture capitalists that</p> <p>11 expressed interest undertake any due diligence of Best</p> <p>12 Rescue to determine whether or not they should invest</p> <p>13 monies in the company?</p> <p>14 A. Some.</p> <p>15 Q. I'm sorry, I didn't hear the answer, if one</p> <p>16 was given.</p> <p>17 A. Yes, some.</p> <p>18 Q. Do you recall any names?</p> <p>19 A. No, I don't.</p> <p>20 Q. What due diligence steps did they take that</p> <p>21 you recall?</p> <p>22 A. Company visit, discussions with Mr. Kirkland.</p> <p>23 Q. At any time prior to September of 1999, did</p> <p>24 Mr. Rodrigues visit Best Rescue's operations?</p> <p>25 A. No.</p> <p style="text-align: right;">Page 47</p> | <p>1 were legal constraints regarding ERISA and the pension</p> <p>2 account?</p> <p>3 A. I don't recall the details regarding that.</p> <p>4 Q. I'm looking at page two of the letter. Is it</p> <p>5 correct that as of September 1999 the business plan and</p> <p>6 the shareholder agreement had not yet been completed?</p> <p>7 A. Yes.</p> <p>8 Q. Is it correct that as of September 1999 the</p> <p>9 total sales for the company was \$30,000?</p> <p>10 A. Yes.</p> <p>11 Q. As of September 1999 the company was still</p> <p>12 finishing market development?</p> <p>13 A. Yes, and certification.</p> <p>14 Q. Is it correct that as of September 1999 the</p> <p>15 product was still undergoing testing and certification?</p> <p>16 A. Yes.</p> <p>17 Q. If you could please look at Exhibit 13. Is</p> <p>18 that your signature on page two of Exhibit 13?</p> <p>19 A. Yes.</p> <p>20 Q. The previous secured promissory notes that we</p> <p>21 looked at were signed by Mr. Kirkland, this one is signed</p> <p>22 by you. What was the reason for the change?</p> <p>23 A. A management turmoil at the company.</p> <p>24 Q. Did you hold a management position with Best</p> <p>25 Rescue at this time in November of 1999?</p> <p style="text-align: right;">Page 49</p> |

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| <p>1 A. No.</p> <p>2 Q. Were you ever an employee of Best Rescue?</p> <p>3 A. No.</p> <p>4 Q. Were you continuing to provide management or</p> <p>5 consulting services to Best Rescue in November of 1999?</p> <p>6 A. Yes.</p> <p>7 Q. This references a \$100,000 secured promissory</p> <p>8 note dated November 22, 1999, is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Was that amount, in fact, funded by the UPW</p> <p>11 Mutual Aid Fund?</p> <p>12 A. Yes.</p> <p>13 Q. Did you at any time have control over the</p> <p>14 account in which the UPW Mutual Aid Fund loans were</p> <p>15 placed?</p> <p>16 A. Yes.</p> <p>17 Q. And during what period of time did you have</p> <p>18 control over that account?</p> <p>19 A. From November 1998 when the first funding</p> <p>20 occurred.</p> <p>21 Q. Did that last all the way up until this time</p> <p>22 in November of 1999?</p> <p>23 A. Yes.</p> <p>24 Q. And were you the person that had to authorize</p> <p>25 disbursements from that account?</p> <p style="text-align: right;">Page 50</p> | <p>1 Q. If you could look please at Exhibit 14. This</p> <p>2 is a letter from you to Mr. Rodrigues, is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Is that your signature?</p> <p>5 A. Yes.</p> <p>6 Q. And did you send this letter on or about the</p> <p>7 date, November 22, 1999?</p> <p>8 A. Yes.</p> <p>9 Q. It references a sixth secured promissory note,</p> <p>10 and that's the Exhibit 13 that we just looked at, is that</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And it references an original security</p> <p>14 agreement. Is that the original Exhibit Three security</p> <p>15 agreement that we marked and talked about previously?</p> <p>16 A. Yes.</p> <p>17 Q. And is it correct that as of November 22, 1999</p> <p>18 UPW Mutual Aid funds total loan amount was 1.1 million?</p> <p>19 A. Yes.</p> <p>20 Q. And that total amount was, in fact, funded, is</p> <p>21 that correct?</p> <p>22 A. Yes.</p> <p>23 Q. And is it correct to say that generally the</p> <p>24 1.1 million went to developing the product, the fire</p> <p>25 rescue product?</p> <p style="text-align: right;">Page 52</p> |
| <p>1 A. Yes.</p> <p>2 Q. The previous letter that we looked at that was</p> <p>3 dated September 10, 1999 discussed a total capitalization</p> <p>4 of one million dollars from the UPW Mutual Aid Fund.</p> <p>5 This document, Exhibit 13, is concerning an additional</p> <p>6 \$100,000. Did you have any discussions with</p> <p>7 Mr. Rodrigues between September 1999 and November 1999 as</p> <p>8 to why an additional \$100,000 was needed?</p> <p>9 A. Yes.</p> <p>10 Q. What did you discuss?</p> <p>11 A. I discussed the management turmoil.</p> <p>12 Q. And what about the management turmoil related</p> <p>13 -- how did that relate to the additional 100,000?</p> <p>14 A. More funds were needed, we were almost ready</p> <p>15 for total capitalization.</p> <p>16 Q. When you say almost ready for total</p> <p>17 capitalization, was that total capitalization from UPW</p> <p>18 Mutual Aid Fund or from another source?</p> <p>19 A. That was from not only the Mutual Aid Fund,</p> <p>20 but also additional sources. The certification was</p> <p>21 ending at that point by three engineers and the marketing</p> <p>22 plan had been completed and the business plan was in the</p> <p>23 final stages of completion. The company at that point</p> <p>24 was ready -- was, to my knowledge, ready to begin full</p> <p>25 force marketing.</p> <p style="text-align: right;">Page 51</p> | <p>1 A. And corporate purposes.</p> <p>2 Q. And how would you define corporate purposes?</p> <p>3 A. Salaries, material expenses, marketing</p> <p>4 expenses, et cetera.</p> <p>5 Q. And after November 1999, did the total</p> <p>6 revenues for the company continue to be \$30,000?</p> <p>7 A. I'm sorry, repeat your question.</p> <p>8 Q. After -- let me restate it. As of November</p> <p>9 22, 1999, were the total sales revenues for Best Rescue</p> <p>10 still \$30,000?</p> <p>11 A. I don't recall.</p> <p>12 Q. Do you recall any other sales other than that</p> <p>13 one sale that resulted in the \$30,000 order?</p> <p>14 A. I don't recall.</p> <p>15 Q. Could you please look at Exhibit 15. And do</p> <p>16 you recognize this document?</p> <p>17 A. Yes.</p> <p>18 Q. This document references a telephone</p> <p>19 conversation -- well, first of all, this is a memo from</p> <p>20 Mr. Rodrigues to you dated December 15, 1999, is that</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And did you receive this memo on or about that</p> <p>24 date?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 53</p> |

14 (Pages 50 to 53)

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1 Q. The memo references a telephone conversation
2 on Friday, December 10, 1999, do you see that?
3 A. Yes.
4 Q. What happened in that conversation?
5 A. If I recall, that conversation was between
6 myself and Gary Rodrigues and he was stating to me that
7 the parent union, AFSCME, had questions regarding the
8 Best Rescue investment and that they were going to
9 exercise the right to call in the investment or call in
10 the loan.
11 Q. Was it your understanding that Mr. Rodrigues
12 was calling in the loan because the parent AFSCME was
13 requesting that he do so?
14 A. Yes.
15 Q. What was your response in that telephone
16 conversation?
17 A. Shock.
18 Q. Why?
19 A. Because I didn't quite understand what was
20 going on.
21 Q. What did you tell Mr. Rodrigues in that
22 conversation?
23 A. I told him then I would do the best I could to
24 liquidate the investment by finding another investor to
25 come to the table.

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1 Q. Were you ever able to find another investor to
2 come to the table?
3 A. No.
4 Q. To your knowledge, did Best Rescue ever pay
5 the \$1.1 million to the UPW Mutual Aid Fund?
6 A. No.
7 Q. Did Best Rescue Systems, Inc. ultimately file
8 for bankruptcy?
9 A. I don't know.
10 Q. Do you know if Mr. Kirkland ultimately filed
11 for bankruptcy?
12 A. I'm sorry, we didn't hear you.
13 Q. Do you know if Mr. Kirkland ultimately filed
14 for bankruptcy?
15 A. I don't know.
16 Q. Is it correct that Best Rescue does not exist
17 today?
18 A. I don't know.
19 Q. When did you last have any investment with
20 Best Rescue in terms of its business, as opposed to
21 things like these depositions?
22 A. I don't recall. It's been a number of years.
23 Q. As of December 1999 had the Best Rescue
24 business plan been completed?
25 A. No, not total completion, no.

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1 Q. As had the marketing plan been completed?
2 A. No, not totally completed.
3 Q. Had the testing and certification been
4 completed?
5 A. Almost.
6 Q. Had all patents been received as of December
7 1999?
8 A. No, patents were still pending.
9 Q. Had Best Rescue signed any contracts with
10 distributors as of December 1999?
11 A. I don't recall.
12 Q. Had Best Rescue completed advertising videos
13 as of December 1999?
14 A. Not completed.
15 Q. Did Best Rescue have any sales orders as of
16 December 1999, other than the \$30,000 order we previously
17 discussed?
18 A. I don't recall.
19 Q. As of December 1999 is it correct that Best
20 Rescue had vacated its offices and was no longer paying
21 office rent?
22 A. I don't recall.
23 Q. Do you know when Best Rescue vacated its
24 offices?
25 A. I don't recall.

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1 Q. When it did have an office, approximately how
2 many square feet did it have?
3 A. I don't know.
4 Q. If Best Rescue did receive orders for product
5 in 1999, was it the company's plan or intention to
6 manufacture the products to fill sales orders or would
7 they have to go out to a separate manufacturer to make
8 the product?
9 A. The product was assembled at their
10 headquarters.
11 Q. Did other suppliers or entities make
12 components of the Best Rescue product?
13 A. I'm sorry, I didn't understand your question,
14 you broke up.
15 Q. I am trying to understand your statement that
16 it was assembled by Best Rescue. Does that mean that
17 other companies, other contractors, would make the
18 different components of the product?
19 A. Yes.
20 Q. Did Best Rescue have contracts with
21 contractors to make the various components for the
22 product as of December 1999?
23 A. Yes.
24 Q. And who were those contractors?
25 A. I don't recall.

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15 (Pages 54 to 57)

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1 **Q. If you could please look at Exhibit 16. And**
2 **my question will be, what is this document?**
3 A. Exhibit 15?
4 **Q. 16.**
5 A. What is your question?
6 **Q. What is this document?**
7 A. It looks like an accounting record of some
8 sort.
9 **Q. Is this the accounting record for the account**
10 **that you had control over where UPW Mutual Aid Fund**
11 **monies were deposited?**
12 A. I don't know.
13 **Q. Do you know who prepared this ledger or**
14 **account?**
15 A. I don't -- I can't really comment on this
16 because it's a single attachment, this document is by
17 itself, I don't know where -- I don't know the origin of
18 this.
19 **Q. I'm looking at page one of the document and at**
20 **the top it says Best Rescue Systems, Inc., Transactions**
21 **by Account as of December 31, 1998. Do you see that?**
22 A. I see that.
23 **Q. And page three says the same thing at the top,**
24 **but as of December 31, 1999, do you see that?**
25 A. Well, I don't have an actual page number that

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1 identify these documents. Are these documents from the
2 certified public accountant that was hired by Best
3 Rescue? I mean, I'm looking at pages that look to be
4 taken from a book, so, I mean, I'd like to answer your
5 question, but where did these documents come from? Did
6 they come from the company? Did they come from another
7 source? Would you please identify where did these
8 documents come from.
9 **Q. My understanding is that the documents were**
10 **produced by you and were Bate stamped in the bottom**
11 **right-hand corner either by you or your attorney at that**
12 **time with the numbers AH and beginning with 0353 in**
13 **response to a subpoena back in approximately the year**
14 **2000.**
15 A. These documents were not produced by me. I
16 don't know where you received these documents. Best
17 Rescue at the time had a certified accounting firm.
18 Perhaps these documents were subpoenaed from the
19 certified accounting firm.
20 **Q. On this document, recognizing that you're**
21 **telling me that you don't recognize the document, at the**
22 **bottom on the first page on the ledger at 12/30/1998, it**
23 **says Al Hewitt and it shows an amount subtracted of**
24 **\$57,000, do you see that?**
25 A. I see that.

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1 you're referring to.
2 **Q. I'm looking at the bottom right-hand corner**
3 **and it says AH-0355, which is the third page of Exhibit**
4 **16.**
5 A. Okay, I see that.
6 **Q. And do you see at the top where it says**
7 **Transactions By Account as of December 31, 1999?**
8 A. Correct.
9 **Q. Do you recognize this as being a ledger**
10 **showing deposits from and withdrawals from -- I'm sorry,**
11 **deposits to and withdrawals from a Best Rescue account?**
12 A. Well, again, I can't comment on these
13 documents because I don't know who originated these
14 documents. You have to tell me who originated these
15 documents. Are these from the company or are these from
16 someone else? You're asking me to identify documents
17 that I'm not familiar with.
18 **Q. That's fine, I'm just asking if you recognize**
19 **it. Is your answer you don't recognize it?**
20 A. I don't recognize them.
21 **Q. I'm looking at page one and it references on**
22 **the very first deposit dated 11/24/1998, a deposit of**
23 **\$250,000. Do you know if that's referencing the \$250,000**
24 **from the UPW Mutual Aid Fund account?**
25 A. Well, again, I'm going back to you have to

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1 **Q. Now, does that refresh your memory as to**
2 **whether at the end of December in 1998 you received**
3 **\$57,000 from Best Rescue?**
4 A. Yes, I did.
5 **Q. What was that money for?**
6 A. That was for monies expended from June of 1998
7 until December of 1998 on the benefit -- for the benefit
8 of the company.
9 **Q. And was this a check to reimburse you for**
10 **those monies that you had spent or advanced for the**
11 **benefit of the company?**
12 A. Yes.
13 **Q. There are other payments reference to The**
14 **Hewitt Company in that ledger on page one. Does that**
15 **refresh your memory as to whether The Hewitt Company also**
16 **received payments in December 1998 from Best Rescue?**
17 A. Yes.
18 **Q. And what were those payments for?**
19 A. I'm sorry, I can't make out the amounts.
20 **Q. I'm looking at 12/12/98, The Hewitt Company**
21 **and I see one for 1,500 and one for 6,000. Does that**
22 **refresh your memory as to whether you received those**
23 **amounts from Best Rescue at that time?**
24 A. I don't see that date at all.
25 **Q. I'm looking at the first page under the names**

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16 (Pages 58 to 61)

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1 and under the names there is The Hewitt Company that
 2 appears twice in the middle of the ledger. Do you see
 3 that?

4 A. I see that.

5 Q. And then opposite that it shows, under the
 6 amounts, less 1,500 and less 6,000. Do you see that?

7 A. I don't see -- those numbers are not clear in
 8 this document.

9 Q. Did you receive payments in December in
 10 addition to the reimbursement amounts that you just
 11 described from Best Rescue?

12 A. Yes.

13 Q. And what were those monies for?

14 A. Evidently they were from the loan origination
 15 fee.

16 Q. And as we discussed before, is it correct that
 17 you had told Mr. Rodriguez that you would be receiving a
 18 loan origination fee in connection with the UPW Mutual
 19 Aid Fund loans?

20 A. To the best of my knowledge.

21 Q. And is it correct that you had told
 22 Mr. Rodriguez that you would be receiving from Best
 23 Rescue reimbursements for monies that you had paid or
 24 advanced on behalf of Best Rescue?

25 A. To the best of my knowledge.

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1 Q. Did you ultimately plead guilty to the
 2 government's charges?

3 A. Yes, I was offered a plea agreement.

4 Q. And what kind of sentence did you receive?

5 A. I received 75 days in prison and one year
 6 probation, of which six months was home detention.

7 Q. Did you tell the government that you had not
 8 been informed that the Mutual Aid Fund Trust account was
 9 an ERISA account?

10 A. Yes.

11 Q. What was the government's response -- what was
 12 the prosecutor's response?

13 A. It didn't matter.

14 Q. Did they explain why?

15 A. No.

16 Q. In hindsight, if you had known that the Mutual
 17 Aid Fund Trust account was an ERISA account, would you
 18 have handled this transaction differently?

19 MR. SEITZ: Objection, calls for speculation.

20 Go ahead.

21 BY MR. PRICE:

22 Q. You can answer subject to that objection.

23 A. Yes.

24 Q. And how would you have handled it differently?

25 A. We wouldn't have moved funds in the Mutual Aid

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1 Q. As a result of the Best Rescue loans, did you
 2 face criminal charges?

3 A. Would you clarify that question?

4 Q. I'm sorry, I didn't hear the answer.

5 A. Would you clarify the question?

6 Q. Did you face criminal charges as a result of
 7 the Best Rescue loans?

8 A. I don't understand your question.

9 Q. Have you faced any criminal charges?

10 A. Yes.

11 Q. What was the reason for the criminal charges?
 12 What was the government alleging against you?

13 A. A violation of the ERISA laws.

14 Q. And what specifically did they say, the
 15 government say, was the violation of the ERISA laws?

16 A. I was a fiduciary of the Mutual Aid Fund
 17 account.

18 Q. And how did you violate the ERISA laws as a
 19 fiduciary, according to the government?

20 A. By taking a fee, the five percent loan
 21 origination fee.

22 Q. And what was the ultimate consequences of the
 23 charges that were made against you; what ultimately
 24 happened in the criminal case?

25 A. I don't understand your question.

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1 Fund to Best Rescue.

2 MR. PRICE: Thank you. I don't have any
 3 further questions. Mr. Seitz will have some
 4 questions for you.

5 CROSS-EXAMINATION

6 BY MR. SEITZ:

7 Q. Mr. Hewitt, do you want to take a little
 8 break?

9 A. No, we can keep going.

10 Q. Okay, listen, do me a favor, though, I think
 11 the reason we have difficulty hearing you is there's a
 12 little bit of a gap when one person speaks and another
 13 one starts to speak, so just hesitate for a moment when I
 14 finish my question before you answer and then we will
 15 probably be able to hear each other better. Okay?

16 A. Okay.

17 Q. Is that all right?

18 A. Yes.

19 Q. Are you there?

20 A. Yes.

21 Q. Okay, we didn't hear you. I can't hear your
 22 responses, that's the problem. Let's try and go forward
 23 then. Please tell me a little bit about yourself.
 24 What's your educational background?

25 A. College, Saint Louis University, University of

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17 (Pages 62 to 65)

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| | |
|---|--|
| <p>1 Pennsylvania.</p> <p>2 Q. Did you get any degrees?</p> <p>3 A. No.</p> <p>4 Q. What was your course of study?</p> <p>5 A. Business.</p> <p>6 Q. I'm sorry, I didn't hear an answer.</p> <p>7 A. Business.</p> <p>8 Q. If you would please describe for me your</p> <p>9 background as an investment advisor or counselor.</p> <p>10 A. I spent two years at Merrill Lynch, five years</p> <p>11 with E.F. Hutton and Company and then I went on my own in</p> <p>12 1988.</p> <p>13 Q. How did you meet Gary Rodrigues?</p> <p>14 A. Through the Royal State Insurance Company</p> <p>15 board.</p> <p>16 Q. And how did you become connected with Royal</p> <p>17 State?</p> <p>18 A. I helped them in a recapitalization of the</p> <p>19 company.</p> <p>20 Q. Were you retained by them as a financial</p> <p>21 advisor?</p> <p>22 A. Yes.</p> <p>23 Q. Who retained you for that purpose?</p> <p>24 A. The Royal State Investment Board.</p> <p>25 Q. And was there any one person there who was</p> <p style="text-align: right;">Page 66</p> | <p>1 Q. 15.</p> <p>2 A. Yes.</p> <p>3 Q. And was it through your experience working</p> <p>4 with Royal State that you were retained by Gary Rodrigues</p> <p>5 to do work for UPW?</p> <p>6 A. Yes.</p> <p>7 Q. And when you were first retained to do any</p> <p>8 work for UPW, what were you retained to do?</p> <p>9 A. Manage the assets of the local pension</p> <p>10 account.</p> <p>11 Q. And did you manage the local pension account?</p> <p>12 A. Yes.</p> <p>13 Q. And what was the amount of money that was</p> <p>14 involved in that pension account?</p> <p>15 A. Less than two million.</p> <p>16 Q. Did you ever meet with anybody at UPW other</p> <p>17 than Gary Rodrigues in connection with your management of</p> <p>18 that account?</p> <p>19 A. No.</p> <p>20 Q. Did you ever meet with the state board of UPW?</p> <p>21 A. No.</p> <p>22 Q. Did you ever meet with the executive</p> <p>23 committee?</p> <p>24 A. No.</p> <p>25 Q. And I heard your testimony, is it your</p> <p style="text-align: right;">Page 68</p> |
| <p>1 your point of contact?</p> <p>2 A. Ron Toyufuku.</p> <p>3 Q. Did you ever meet a person in connection with</p> <p>4 Royal State Corporation by the name of Russell Okata?</p> <p>5 A. Yes.</p> <p>6 Q. Was Mr. Okata the chairman of the board when</p> <p>7 you were advising them?</p> <p>8 A. To the best of my knowledge.</p> <p>9 Q. And was Gary Rodrigues a member of the board?</p> <p>10 A. Yes.</p> <p>11 Q. What exactly did you do for Royal State?</p> <p>12 A. I managed their investment portfolio, in</p> <p>13 addition to providing consulting services on various</p> <p>14 projects.</p> <p>15 Q. And what was the extent of their investment</p> <p>16 portfolio, if you can recall?</p> <p>17 A. I don't understand your question.</p> <p>18 Q. How much money did you manage for them?</p> <p>19 A. I started off managing 12 million.</p> <p>20 Q. And eventually did it grow to about 15</p> <p>21 million?</p> <p>22 A. I'm sorry, I didn't hear you.</p> <p>23 Q. Eventually did that amount grow to about 15</p> <p>24 million?</p> <p>25 A. 15 or 50?</p> <p style="text-align: right;">Page 67</p> | <p>1 testimony that you've never met with anybody directly</p> <p>2 associated with the Mutual Aid Fund Trust other than Gary</p> <p>3 Rodrigues?</p> <p>4 A. Rephrase your question.</p> <p>5 Q. Was it your testimony that you never met with</p> <p>6 anybody associated with the Mutual Aid Fund Trust other</p> <p>7 than Gary Rodrigues?</p> <p>8 A. That was my testimony.</p> <p>9 Q. Okay. Did you submit regular written reports</p> <p>10 pertaining to the investments that you were handling for</p> <p>11 the staff pension account?</p> <p>12 A. No.</p> <p>13 Q. I'm sorry, we didn't hear your answer.</p> <p>14 A. No.</p> <p>15 Q. There were no written reports submitted?</p> <p>16 A. No.</p> <p>17 Q. Were those accounts audited on a regular</p> <p>18 basis?</p> <p>19 A. Yes.</p> <p>20 Q. And were they audited by outside auditors?</p> <p>21 A. Yes.</p> <p>22 Q. And were those audits provided, to your</p> <p>23 knowledge, to UPW?</p> <p>24 A. Yes.</p> <p>25 Q. Were there ever any -- when did you first</p> <p style="text-align: right;">Page 69</p> |

18 (Pages 66 to 69)

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| | |
|--|---|
| <p>1 start managing the staff pension account?</p> <p>2 A. It was in the early 1990's.</p> <p>3 Q. And that's right after you met Gary Rodrigues,</p> <p>4 I think you said you met him in 1990?</p> <p>5 A. Approximately that date.</p> <p>6 Q. Between then and 1998, were there ever any</p> <p>7 complaints about the financial advice or management that</p> <p>8 you were providing to UPW?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. How did the issue first come up of any kind of</p> <p>11 investment in Best Rescue?</p> <p>12 A. I brought it to my clients' attention in</p> <p>13 Hawaii.</p> <p>14 Q. And your client was?</p> <p>15 A. Royal State Investment -- I'm sorry, Royal</p> <p>16 State Insurance Company and DTRIC and UPW.</p> <p>17 Q. You brought it to all three?</p> <p>18 A. Yes.</p> <p>19 Q. And were all three interested when you first</p> <p>20 raised it with them?</p> <p>21 A. Yes.</p> <p>22 Q. And I think you said, however, the only entity</p> <p>23 that ever produced any money was the UPW Mutual Aid Fund</p> <p>24 Trust, is that correct?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 70</p> | <p>1 management of the Mutual Aid Fund Trust prior to the</p> <p>2 discussion of Best Rescue first coming up?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. Were there regular reports of the management</p> <p>5 of those funds that were provided to UPW?</p> <p>6 A. Yes.</p> <p>7 Q. And to your knowledge, were those reports</p> <p>8 audited?</p> <p>9 A. Yes.</p> <p>10 Q. Were you aware at any time that the Mutual Aid</p> <p>11 Fund Trust had a board of trustees?</p> <p>12 A. No.</p> <p>13 Q. Did Gary Rodrigues ever represent to you that</p> <p>14 he was authorized to make investment decisions regarding</p> <p>15 the Mutual Aid Fund Trust?</p> <p>16 A. Would you repeat your question.</p> <p>17 Q. Did Gary Rodrigues ever represent to you that</p> <p>18 he was authorized to make decisions pertaining to</p> <p>19 investments of Mutual Aid Fund Trust monies?</p> <p>20 A. To the best of my knowledge.</p> <p>21 Q. To the best of your knowledge what?</p> <p>22 A. To the best of my knowledge he was authorized.</p> <p>23 Q. And do you know by whom or through what</p> <p>24 process he was authorized?</p> <p>25 A. No.</p> <p style="text-align: right;">Page 72</p> |
| <p>1 Q. Prior to investing any Mutual Aid Fund Trust</p> <p>2 monies in Best Rescue, what other investments had you</p> <p>3 handled of that entity's money?</p> <p>4 A. Would you rephrase your question? It's</p> <p>5 confusing.</p> <p>6 Q. Sorry. Prior to having the Mutual Aid Fund</p> <p>7 Trust monies involved in Best Rescue, what other</p> <p>8 investments did you handle for that entity?</p> <p>9 A. For the Mutual Aid Fund?</p> <p>10 Q. Yes.</p> <p>11 A. Clarify your question.</p> <p>12 Q. Okay, when did you first start to manage</p> <p>13 Mutual Aid Fund Trust monies?</p> <p>14 A. I don't recall the exact date.</p> <p>15 Q. It was prior to 1998 however, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And were you doing that for a period of</p> <p>18 several years before the issue of Best Rescue ever came</p> <p>19 up?</p> <p>20 A. Yes.</p> <p>21 Q. And what kind of investments were you engaged</p> <p>22 in for the Mutual Aid Fund Trust prior to any issue of</p> <p>23 Best Rescue coming up?</p> <p>24 A. Stocks and bonds.</p> <p>25 Q. And were there ever any complaints about your</p> <p style="text-align: right;">Page 71</p> | <p>1 Q. Did you ever talk to him about that?</p> <p>2 A. No.</p> <p>3 Q. You knew that he was the administrator of the</p> <p>4 plan, is that correct?</p> <p>5 A. I don't understand the word administrator.</p> <p>6 Q. Well, that was the title that he signed some</p> <p>7 of these documents, right?</p> <p>8 A. That's what was stated earlier.</p> <p>9 Q. Okay. Do you know if he had any other title</p> <p>10 with respect to the Mutual Aid Fund Trust?</p> <p>11 A. No.</p> <p>12 Q. Did you ever ask him?</p> <p>13 A. No.</p> <p>14 Q. Did you ever need to ask him?</p> <p>15 A. No.</p> <p>16 Q. Just give me a minute, I've got a bunch of</p> <p>17 notes here. I'll be right back to you, hold on a second.</p> <p>18 Let me ask you initially on another subject altogether,</p> <p>19 did you do anything or review anything in preparation for</p> <p>20 this deposition today?</p> <p>21 A. No.</p> <p>22 Q. Have you ever talked to Mr. Price</p> <p>23 substantively about the matters that you testified to</p> <p>24 here today?</p> <p>25 A. What do you mean?</p> <p style="text-align: right;">Page 73</p> |

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| <p>1 Q. Has he ever questioned you about these matters 2 previously? 3 A. No. 4 Q. Have you had any contact with the UPW or any 5 attorneys representing the UPW, other than to arrange the 6 logistics of the deposition? 7 A. Yes. 8 Q. What have those contacts been? 9 A. I've talked to -- I've been involved with many 10 attorneys for the UPW. 11 Q. Can you give me some of their names? 12 A. I can't recall names at this point. 13 Q. Were you also involved in a lawsuit by the 14 parent union, AFSCME? 15 A. Yes. 16 Q. And was your deposition taken in that case? 17 A. Yes. 18 Q. And what is the status of that lawsuit, do you 19 know? 20 A. That lawsuit has been settled. 21 Q. And what were the terms of the settlement? 22 A. I don't know. They were private. 23 Q. Were you a party to the settlement? 24 A. Yes. 25 Q. Do you have any documents pertaining to that</p> <p style="text-align: right;">Page 74</p> | <p>1 Q. Did you ever puff it up or add rosy material 2 to impress him beyond what was actually taking place? 3 A. No. 4 Q. What was the nature of your relationship with 5 Gary Rodrigues, how would you characterizes it? 6 A. I was his advisor. 7 Q. Did you have mutual confidence in one another? 8 A. To the best of my knowledge, yes. 9 Q. Did you ever pay any money to Gary Rodrigues 10 from any investments or any loan origination fees or 11 anything like that? 12 A. Never. 13 Q. Did he ever ask for any monies? 14 A. Never. 15 Q. Do you know, did the Mutual Aid Fund Trust do 16 any kind of due diligence before it invested any monies 17 or loaned any monies to Best Rescue? 18 A. Not to my knowledge. 19 Q. You're not aware of any due diligence that 20 would have been done? 21 A. No. 22 Q. What was it that happened with regard to First 23 Hawaiian Bank that led to some questions being raised 24 about the investment of UPW staff pension money? 25 A. I did the inquiry with them, there weren't</p> <p style="text-align: right;">Page 76</p> |
| <p>1 settlement? 2 A. Yes. 3 Q. Was money recovered by the parent union from 4 the investment that UPW Mutual Aid Fund Trust made in 5 Best Rescue? 6 A. To the best of my knowledge, yes. 7 Q. You don't know how much? 8 A. No. 9 Q. Is it your belief, based on the information 10 you have and your recollection of the events, that at any 11 time Gary Rodrigues violated any fiduciary obligation 12 that he may have had? 13 MR. PRICE: Objection, calls for a legal 14 conclusion. 15 BY MR. SEITZ: 16 Q. Go ahead, Mr. Hewitt. 17 A. I can't answer that. I don't know. 18 Q. Did Gary Rodrigues, to your knowledge, ever 19 misrepresent anything to you? 20 A. Not to my knowledge. 21 Q. Did you ever misrepresent anything to him? 22 A. No. 23 Q. When you gave him progress reports about Best 24 Rescue, was everything you told him true? 25 A. To the best of my knowledge.</p> <p style="text-align: right;">Page 75</p> | <p>1 questions, I asked the questions. I had a discussion 2 with First Hawaiian Bank as to the suitability. They 3 didn't have questions, I had the questions. 4 Q. And what was the difference in the situation 5 involving the UPW money, staff pension money and any 6 loans or investments that came from the Mutual Aid Fund 7 Trust? 8 A. I don't understand your question. 9 Q. Why was it that those same questions did not 10 apply to the Mutual Aid Fund Trust money? 11 A. Because the Mutual Aid Fund, to my knowledge, 12 was not under ERISA law, was not covered under ERISA law. 13 Q. And are you satisfied, as you sit there today, 14 that you were wrong about that at the time, that was an 15 incorrect assumption on your part? 16 A. No, as I sit here to this day, I believe that 17 I was misinformed of the type of account the Mutual Aid 18 Fund was. 19 Q. And who misinformed you? 20 A. The people that controlled the account. 21 Q. And who was that? 22 A. Smith Barney acted as custodian for the 23 account and Mr. Rodrigues evidently was the person in 24 charge of the account. 25 Q. Did you ever deal with people at Smith Barney</p> <p style="text-align: right;">Page 77</p> |

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| <p>1 In connection with the investment of monies or loans in 2 Best Rescue? 3 A. Yes. 4 Q. Who did you deal with at Smith Barney? 5 A. Peter Backus. 6 Q. And did you have any discussions with 7 Mr. Backus about the nature of the UPW Mutual Aid Fund 8 Trust? 9 A. Clarify your question. 10 Q. Sure. Did you have any discussions with them 11 directly pertaining to the monies from the Mutual Aid 12 Fund Trust being invested in or loaned to Best Rescue? 13 A. Yes. 14 Q. And did you provide Smith Barney information 15 about the nature of that particular company? 16 A. Yes. 17 Q. And did they raise any issues with you about 18 the appropriateness of monies from the UPW Mutual Aid 19 Fund Trust being utilized for that purpose? 20 A. No. 21 Q. To your knowledge, based on everything that 22 you saw or heard, was Gary Rodrigues ever informed that 23 there might be some problem about this particular 24 investment? 25 A. I don't know.</p> <p style="text-align: right;">Page 78</p> | <p>1 complaint that Mr. Price asked you about, were there any 2 other defendants in that criminal case? 3 A. No. 4 Q. Was there any implication that you had acted 5 with anybody else? 6 A. No. 7 Q. You've been sued by the parent union AFSCME 8 over this matter. Have there been any other lawsuits? 9 A. No. 10 Q. Are you currently employed, sir? 11 A. Yes. 12 Q. What are you currently doing? 13 A. I'm a car salesman. 14 Q. Prior to this problem with Best Rescue, had 15 you ever had any disciplinary action taken against you in 16 connection with any of the licenses or certifications 17 that you held? 18 A. No. 19 Q. Had anyone ever sued you alleging any breach 20 of fiduciary obligations prior to this matter of Best 21 Rescue? 22 A. Not to my knowledge. 23 Q. Based upon your history and your background, 24 is there anything about you which Gary Rodrigues knew or 25 should have known that would have caused him to question</p> <p style="text-align: right;">Page 80</p> |
| <p>1 Q. From your knowledge on your working with Gary, 2 had Gary known of some issue or some problem, do you 3 think he would have proceeded with the transmission of 4 the funds? 5 MR. PRICE: Objection, calls for speculation. 6 BY MR. SEITZ: 7 Q. Did you understand my question? 8 A. Yes. I don't believe so. 9 Q. Was Gary the kind of person who would ever 10 risk any monies belonging to UPW or any UPW entity in a 11 risky investment? 12 A. No. 13 Q. For the record, there was an objection. I 14 guess the same objection. 15 MR. PRICE: We were talking at the same time, 16 so I guess it was difficult to hear. 17 BY MR. SEITZ: 18 Q. Just give me a minute, Mr. Hewitt, I may be 19 done. Are you available, if necessary, to testify at a 20 trial in this case? 21 A. Yes. 22 Q. Are you willing to come to Hawaii if you get a 23 subpoena for that purpose? 24 A. Yes. 25 Q. Other than you being named in the criminal</p> <p style="text-align: right;">Page 79</p> | <p>1 advice that you gave him? 2 A. Not to my knowledge. 3 Q. When was the last time you had any contact 4 with Mr. Rodrigues? 5 A. Years ago. 6 Q. Other than Best Rescue, did you also make 7 recommendations of investments in other companies to the 8 UPW entities? 9 A. Yes. 10 Q. And in connection with those recommendations, 11 did you supply them with information about those 12 investment opportunities? 13 A. No. 14 Q. Did they follow your recommendations in some 15 instances? 16 A. Yes. 17 Q. And did they reject your recommendations in 18 other instances? 19 A. No. 20 Q. They always followed your recommendations? 21 A. Yes. 22 Q. And other than Best Rescue, were there any of 23 those recommendations and investments that turned out to 24 be bad, to your knowledge? 25 A. I don't recall.</p> <p style="text-align: right;">Page 81</p> |

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| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 | <p>MR. SEITZ: I'm done, Mr. Hewitt. Thank you very much.</p> <p style="text-align: center;">REDIRECT EXAMINATION</p> <p>BY MR. PRICE:</p> <p>Q. I have one question. Mr. Hewitt, did you provide any financial management services to Mr. Rodriguez personally?</p> <p>A. Yes.</p> <p>Q. During what period of time?</p> <p>A. I don't know the exact dates, I don't recall.</p> <p>Q. Was it for more than a year or less than a year?</p> <p>A. More than a year.</p> <p>Q. Was it more than five years?</p> <p>A. I don't recall the exact dates.</p> <p>Q. Did you charge him for your services?</p> <p>A. No.</p> <p>MR. PRICE: I don't have any further questions.</p> <p>MR. SEITZ: I have none. Thank you. I think we're done.</p> <p style="text-align: center;">(Ending time: 5:05 p.m.)</p> | |
| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 | <p>I, SUSAN WEISHAUP, Certified Shorthand Reporter, certify;</p> <p>That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;</p> <p>That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;</p> <p>That the foregoing is a true and correct transcript of my shorthand notes so taken.</p> <p>I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.</p> <p>I declare under penalty of perjury under the laws of Florida that the foregoing is true and correct</p> <p>Dated this 9th day of March 2007.</p> <p style="text-align: center;">_____ SUSAN WEISHAUP, CSR</p> | |

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